

#### § 270.135

application, the Director may make a tentative decision to deny your RAP application. After making this tentative decision, the Director will prepare a notice of intent to deny your RAP application (“notice of intent to deny”) and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in this Subpart. The Director may deny the RAP application either in its entirety or in part.

#### § 270.135 What must the Director include in a draft RAP?

If the Director prepares a draft RAP, it must include the:

(a) Information required under § 270.110(a) through (f);

(b) The following terms and conditions:

(1) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of parts 264, 266, and 268 of this chapter (including any recordkeeping and reporting requirements). In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of parts 264, 266, and 268 of this chapter into the RAP or establish site-specific conditions as required or allowed by parts 264, 266, and 268 of this chapter;

(2) Terms and conditions in § 270.30;

(3) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in § 270.170; and

(4) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

(c) If the draft RAP is part of another document, as described in § 270.80(d)(2), the Director must clearly identify the components of that document that constitute the draft RAP.

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#### § 270.140 What else must the Director prepare in addition to the draft RAP or notice of intent to deny?

Once the Director has prepared the draft RAP or notice of intent to deny, he must then:

(a) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;

(b) Compile an administrative record, including:

(1) The RAP application, and any supporting data furnished by the applicant;

(2) The draft RAP or notice of intent to deny;

(3) The statement of basis and all documents cited therein (material readily available at the issuing Regional office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and

(4) Any other documents that support the decision to approve or deny the RAP; and

(c) Make information contained in the administrative record available for review by the public upon request.

#### § 270.145 What are the procedures for public comment on the draft RAP or notice of intent to deny?

(a) The Director must:

(1) Send notice to you of his intention to approve or deny your RAP application, and send you a copy of the statement of basis;

(2) Publish a notice of his intention to approve or deny your RAP application in a major local newspaper of general circulation;

(3) Broadcast his intention to approve or deny your RAP application over a local radio station; and

(4) Send a notice of his intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

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(b) The notice required by paragraph (a) of this section must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

(c) The notice required by paragraph (a) of this section must include:

(1) The name and address of the office processing the RAP application;

(2) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

(3) A brief description of the activity the RAP will regulate;

(4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

(5) A brief description of the comment procedures in this section, and any other procedures by which the public may participate in the RAP decision;

(6) If a hearing is scheduled, the date, time, location and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

(8) The location of the administrative record, and times when it will be open for public inspection; and

(9) Any additional information the Director considers necessary or proper.

(d) If, within the comment period, the Director receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the Director must hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on his own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in paragraph (a) of this section. This notice must, at a

minimum, include the information required by paragraph (c) of this section and:

(1) Reference to the date of any previous public notices relating to the RAP application;

(2) The date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

### **§ 270.150 How will the Director make a final decision on my RAP application?**

(a) The Director must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.

(b) If the Director determines that your RAP includes the information and terms and conditions required in § 270.135, then he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.

(c) If the Director determines that your RAP does not include the information required in § 270.135, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.

(d) If the Director's final decision is that the tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this subpart.

(e) When the Director issues his final RAP decision, he must refer to the procedures for appealing the decision under § 270.155.

(f) Before issuing the final RAP decision, the Director must compile an administrative record. Material readily available at the issuing Regional office or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or